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REMARKS

The Applicant thanks the Examiner for examining this application. Please consider the following remarks in support of withdrawing the Final Rejection mailed on February 25, 2010.

Improper Final Office Action

The Applicant's amendments merely incorporated features of the dependent claims into the independent claims. There was therefore no basis for conducting a new search or reconsideration. The Applicant's amendments did not necessitate a new search or new grounds of rejection. All of the features in the claims as amended were previously presented, searched, and subject to consideration by the Examiner. It was therefore improper for the Examiner to make the most recent Office Action final, and in the process cite new grounds of rejection and new references for independent claims 10 and 15.

The Examiner is obliged to give the Applicant a fair opportunity to respond to new grounds of rejection, without forcing undue delay and cost through prematurely final action. In this case, the Examiner made new grounds of rejection on previously presented claim features, made the action final, and provided the Applicant no fair opportunity to respond.

The Applicant therefore respectfully requests that this response addressing the new grounds of rejection be entered, and the finality of the Office Action be withdrawn so that the Applicant is given a fair chance to respond to the new references and grounds of rejection before prosecution is closed.

Claim Objections

Claims 6 and 7 are objected to because of alleged informalities. Amendments are made to the claims to address the claim objections.

35 U.S.C. 102(b)

Claims 1-4 and 10-14 are rejected under 35 U.S.C. 102(b) as being allegedly anticipated by Hendricks et al. (U.S. Patent 5,600,364, referred to as Hendricks).

Claim 1 and Dependents

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Claim 1 (and its dependent claims) describe a content on demand system including logic to alternatively deliver information about multiple audio and/or video streams on a first tunable channel and on a second tunable channel.

Hendricks does not disclose anything remotely like alternatively delivering information about multiple audio and/or video streams on a first tunable channel and on a second tunable channel. The cited figure (8a) and elements merely show a graphical interface program options. The cited passages (Abstract, col 15 ll 22-40, col 7 ll 1-14, col 12 ll 51 – col 13, ll5 merely describe the communication and display of program menu options in conventional ways, not alternatively on different tunable channels. Hendricks does not describe the delivery mechanism of the claims. “Alternatively” as used in the claims has its common meaning, and meaning as used in the specification, which is ‘alternating from one to the other’. Thus ‘alternatively delivering information about multiple audio and/or video streams on a first tunable channel and on a second tunable channel’ means delivering the stream information alternately, on a first tunable channel, then on a second, then eventually back to the first again, and so on. With all due respect, the Examiner ignores this plain meaning and cites passages from Hendricks with no bearing or relation to the claim features. In fact, in an earlier Office Action the Examiner acknowledged that Hendricks does not disclose or suggest these features.

35 U.S.C. §103(a)

Claims 6-8 are rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Hendricks in view of Aggarwal et al. (U.S. Patent 6,631,413, referred to as Aggarwal). Claim 9 is rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Hendricks in view of Ellis et al. (U.S. Patent 2004/0117831 A1, referred to as Ellis).

Neither Aggarwal nor Ellis supplies the features for which Hendricks is relied upon, and which are in fact not disclosed in Hendricks. See the remarks, supra. Nothing in either reference, nor set forth in the Office Action, would cause the missing features to arise as obvious to one skilled in the art. Rather, the Office Action relies on the assertion that the features are explicit in Hendricks, which in the Applicant’s view is respectfully not the case.

Claim 10 and Dependents

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Claim 10 and 12-14 are rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Hendricks in view of Curreri (U.S. Patent 6,817,027, referred to as Curreri).

Neither Curreri nor Hamilton supplies the features for which Hendricks is relied upon (supplying index information on alternate tunable channels), and which are in fact not disclosed in Hendricks. See the remarks, supra. Nothing in either reference, nor set forth in the Office Action, would cause the missing features to arise as obvious to one skilled in the art. Rather, the Office Action relies on the assertion that the features are explicit in Hendricks, which in the Applicant's view is respectfully not the case.

Claims 15-16

Claims 15-16 are rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Hendricks in view of Hamilton (U.S. Patent 7,305,357, referred to as Hamilton).

The Office Action states that Hamilton teaches a service group identifier. It therefore concludes Applicant's claim feature, applying audio and/or video title information and a service group identifier in a request communicated to an on-demand server system, would somehow be obvious, merely because Hamilton discloses a service group identifier. Yet neither Hendricks nor Hamilton teach using a service group identifier in the claimed fashion. The Examiner merely concludes it would be obvious to do so. The Applicant respectfully asserts the rejection of claims 15-16 is therefore unreasonable for at least the reason that it is unsubstantiated by a consistent chain of reasoning from the disclosure of the two references to the claimed features.

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Conclusion

The Applicant respectfully requests allowance of all remaining claims. If the Examiner believes that a telephone interview would in any way advance prosecution of the present application, please contact the undersigned.

Please charge any additional fees under 37 CFR §§ 1.16, 1.17, 1.18, 1.20 and 1.21 that may be required to maintain pendency of the present application, or apply any credits to our PTO deposit account number: 501691.

Signature	/Charles A. Mirho/ Charles A. Mirho Reg. 41,199 Attorney for Applicant	Date: 04/26/2010
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